

STANDARD TERMS AND CONDITIONS
FOR PURCHASE ORDERS

This form contract is intended for use with professional purchase order services.

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TABLE OF CONTENTS

1. DEFINITIONS.....	4
2. PO ACCEPTANCE.....	4
3. DELIVERY	4
4. ACCEPTANCE BY BUYER.....	4
5. CASH DISCOUNT PERIOD	5
6. RISK OF LOSS.....	5
7. WARRANTY	5
8. ASSIGNMENT OF RIGHTS	5
9. CHANGE, CANCELLATION AND TERMINATION	5
10. TAXES.....	5
11. USE OF BUYER’S NAME	5
12. COVENANTS AGAINST KICKBACKS.....	6
13. MINORITY BUSINESS ENTERPRISES	6
14. EXCUSE.....	6
15. INDEMNIFICATION.....	7
16. INSURANCE	7
17. COMPLIANCE WITH LAWS	7
18. HAZARDOUS MATERIALS	7
19. BUYER’S PROPERTY.....	7
20. INSOLVENCY	8
21. INDEPENDENT CONTRACTOR	8
22. CONFIDENTIALITY	8
23. WAIVER	8
24. SEVERABILITY.....	8
25. VENUE/LAW	8
26. RIGHTS AND REMEDIES.....	8

27.	AUDIT	9
28.	GAMING PROCEDURES	9
29.	PRECEDENCE.....	9

**MASHANTUCKET PEQUOT TRIBAL NATION
STANDARD PURCHASE ORDER TERMS AND CONDITIONS**

1. DEFINITIONS

“Buyer” means the Mashantucket Pequot Tribal Nation, a federally recognized Indian Tribe (25 US 1751) or any instrumentality thereof, including, but not limited to, the Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort Casino (“MPTN”). “Seller” means the person, firm, company, limited liability company or corporation supplying the goods or services under Buyer’s purchase contract/PO, including these Terms and Conditions (the “PO”), and includes all sales or other agents, subcontractors, employees and distributors thereof.

2. PO ACCEPTANCE

The PO contains all of the terms and conditions applicable to the goods and/or services to be delivered to Buyer pursuant to the PO. Upon acceptance of the PO, shipment of goods or commencement of services, Seller shall be bound by the provisions of the PO, including the special provisions on the face of the PO, unless Seller objects to such terms in writing prior to shipping goods or commencing services. In the event of any objection, the PO may only be modified pursuant to a writing executed by a duly authorized representative of Buyer, and shall control over any contrary term or condition contained in any form or pre-printed document, acknowledgement or delivery receipt provided by Seller to Buyer.

3. DELIVERY

Unless otherwise specified in the PO, all shipments shall be F.O.B. Mashantucket to the “ship to” location specified in the PO. Delivery shall be in accordance with the schedule set forth in the PO, unless otherwise agreed to by Buyer. Delays in shipment shall be reported immediately by Seller to Buyer. Buyer reserves the right to cancel the PO, in whole or in part, if Seller should fail to make deliveries in accordance with the terms of the PO, or require Seller to ship goods, at Seller’s expense, by expedited routing.

4. ACCEPTANCE BY BUYER

Goods and/or services purchased under the PO are subject to Buyer’s inspection and approval within a reasonable time, but not less than sixty 60 days after delivery. Buyer, at its option, may reject all or any portion of such goods or services which do not conform in every respect with the terms of the PO, or require Seller to provide replacement goods or re-perform services in conformity with the terms of the PO. If Buyer elects to accept nonconforming goods or services, Buyer, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the contract price thereof to compensate Buyer for the nonconformity. Any acceptance by Buyer shall not be deemed a waiver or settlement of any defect in such goods and/or services.

5. CASH DISCOUNT PERIOD

The cash discount period available to Buyer shall commence on the later to occur of Buyer's receipt of all goods and services or the date of its receipt of a properly executed invoice.

6. RISK OF LOSS

Until accepted by Buyer as provided above, Seller shall bear all risk of loss and damage, unless such loss or damage results from the negligence of Buyer.

7. WARRANTY

Seller warrants that (i) all goods delivered under the PO will be free from defects in material and workmanship, and conform to applicable specifications, (ii) Seller has good title to the goods provided to Buyer and passes such title to Buyer free from any liens, security interests or other encumbrances, (iii) the goods are merchantable and fit for the purpose intended, (iv) all services shall be completed in a professional, workmanlike manner and in accordance with applicable specifications, and (v) the goods and services provided under the PO will not infringe or violate any patents, trade secrets, trademarks copyrights or other rights of any third party. To the extent applicable, Seller shall assign all express warranties of any manufacturer of the goods for the benefit of Buyer.

8. ASSIGNMENT OF RIGHTS

Seller may not assign or delegate its rights or duties hereunder without the express written consent of Buyer.

9. CHANGE, CANCELLATION AND TERMINATION

The PO can be changed, terminated or canceled by Buyer for any reason, including convenience upon prior written notification to Seller. In the event of a change, Buyer and Seller will make a fair and equitable modification to their rights and obligations under the PO, if such change results in an increase or decrease in costs to be incurred or time needed to complete performance of the PO. Termination or cancellation for convenience by Buyer will entitle Seller to payment for only those goods or services delivered, received and accepted, and not subsequently rejected by Buyer. Buyer may immediately terminate the PO without prejudice to any right or remedy, after giving Seller notice of any breach by Seller of its obligations hereunder.

10. TAXES

Except as otherwise expressly provided in the PO, the contract price shall include all applicable Federal, State and local taxes of any kind. Goods and services purchased by Buyer for its use on the Mashantucket Pequot Tribal Reservation are not subject to Connecticut Sales Tax. Buyer will identify all goods and services, which are not subject to Connecticut Sales Tax.

11. USE OF BUYER'S NAME

Seller agrees not to use the name of Buyer or disclose the existence of the PO in any advertising, promotion or other written or oral disclosure without the prior written consent of Buyer.

12. COVENANTS AGAINST KICKBACKS

- 12.1 For purposes of this subsection “Money” means any cash, fee, commission, credit, gift, gratuity, thing of value or compensation of any kind.
- 12.2 For purposes of this subsection a “Tribal Contract” means a written contract with the MPTN, Foxwoods, PRxN, or any other political subdivision of the Tribe or with any Tribally owned business.
- 12.3 For purposes of this subsection a “Kickback” means any Money which is provided or is offered, as herein provided, for the purpose of obtaining or maintaining a Tribal Contract or for rewarding favorable treatment in connection with any Tribal Contract.
- 12.4 Seller represents, warrants, covenants and agrees that neither Seller nor its affiliates or any subcontractors (including any of their officers or employees) has provided or attempted to provide, either directly or indirectly, any Kickback to any employee of the MPTN or to any member of the Tribe. Seller further warrants, covenants and agrees that neither Seller nor its affiliates nor any subcontractors (including any of their officers or employees) will, in the future, provide or attempt to provide, either directly or indirectly, any Kickback to any employee of the MPTN or to any member of the Tribe.
- 12.5 Failure to abide by the provisions of this section may, without further notice, result in the immediate termination of this Agreement.

13. MINORITY BUSINESS ENTERPRISES

- 13.1 Consultant shall target 15% of all subcontract work, of any tier, to be awarded to Native American Business Enterprises, Minority Business Enterprises, and/or Woman Owned Business Enterprises (“MBE”). Consultant shall report quarterly and shall submit a summary report prior to final payment in a format as specified by the Purchasing Agent. No price factoring is to be considered in subcontract selection. Consultant’s performance regarding MBE placements will be considered as evaluative criteria for this Agreement and for future contract awards.
- 13.2 Consultant shall not discriminate against any subcontractors or employee regarding race, religion, color, sex, age, physical condition or national origin.

14. EXCUSE

Seller shall be excused for any nonperformance due principally to circumstances, which are both beyond its control and not foreseeable, but in no event shall Seller be excused for any inability to obtain goods or services necessary for Seller’s performance, nor for

any labor dispute involving employees of Seller, Buyer, any subcontractor of either, any carrier or any other person.

15. INDEMNIFICATION

Seller agrees to indemnify and hold harmless Buyer from and against any and all claims, actions, damages, or other losses arising from or by reason of Seller's performance hereunder, except to the extent that such claims, actions, damages or other losses result from Buyer's gross negligence or willful misconduct. As used in this indemnification provision and for purposes of Seller's insurance, "Buyer" shall be deemed to include Buyer's Council, officers, employees, agents, guests and invitees.

16. INSURANCE

At all times during its performance hereunder Seller shall obtain and keep in force workers' compensation insurance for all of its employees within statutory limits, and commercial general liability insurance, including coverage for product liability and completed operations, contractual liability, vendors broad form liability of not less than \$1,000,000 per occurrence, and \$2,000,000 in aggregate, and automobile liability for all owned, non-owned and hired vehicles used in carrying out the PO, with limits of not less than \$1,000,000 Combined Single Limit. Insurance must be provided by an insurance company licensed to do business in the State of Connecticut with a minimum AM Best rating of A VII or Weiss rating B or better. Buyer reserves the right to require additional coverages or higher limits where warranted. Seller shall provide Buyer with a certificate of insurance evidencing Seller's compliance with the foregoing insurance provisions upon request. **Buyer's obligations under the PO are dependent upon Seller's meeting the insurance requirements set forth above.**

17. COMPLIANCE WITH LAWS

Seller shall comply with all laws and governmental rules, regulations and POs applicable to the goods delivered and/or services rendered under the PO, including, but not limited to, obtaining all necessary licenses and permits, including those which may be required by MPTN's Land Use Commission for work performed on the MPTN Reservation.

18. HAZARDOUS MATERIALS

All packaging, transportation and handling of hazardous materials shall be in accordance with applicable laws and regulations. All Sellers who supply hazardous materials shall provide Material Safety Data Sheets with the PO.

19. BUYER'S PROPERTY

All materials, including documents, drawings, specifications and tools, furnished or paid for by Buyer shall remain the exclusive property of Buyer. All documents, drawings, and specifications shall be considered confidential and not disclosed to any third party. All materials shall be returned to Buyer upon Seller's completion of its obligations under the PO. Seller assumes all liability for loss or damage of such materials, excluding normal wear and tear.

20. INSOLVENCY

In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, or in the event of the appointment of an assignee for the benefit of creditors or of a receiver, Buyer shall be entitled to cancel the PO, in whole or in part, without any liability whatsoever.

21. INDEPENDENT CONTRACTOR

Seller is an independent contractor for all purposes of the PO, and has no express or implied authority to bind Buyer by contract or otherwise.

22. CONFIDENTIALITY

Seller acknowledges that it may be exposed to confidential information of Buyer. Confidential information includes, but is not limited to, data relating to Buyer's operation, customer data, financial records, and other information of the business affairs of Buyer. Seller shall not, directly or indirectly, use, disseminate, disclose, or in any way reveal or use beyond the scope of authority granted by Buyer all or any part of the confidential information, which it will be exposed to, and shall use such confidential information only to the extent specifically authorized by Buyer. Upon cancellation or termination of the PO for any reason whatsoever, Seller shall turn over to Buyer any and all copies it may have of confidential information. Seller acknowledges that this provision shall survive the termination of the PO. The confidentiality provisions of this Paragraph shall apply to and be binding upon Seller's officers, employees, and representatives.

23. WAIVER

Waiver of a breach of any provision of the PO shall not constitute waiver of future compliance with such provision nor shall it be construed as a waiver of any other breach.

24. SEVERABILITY

If any provision of the PO, including these Terms and Conditions, shall be declared illegal, void or otherwise unenforceable, the remaining provisions shall not be affected and will remain in full force and effect.

25. VENUE/LAW

The Seller and MPTN agree that any disputes that may arise under this contract that cannot be resolved through mediation shall be subject to the exclusive jurisdiction of the Mashantucket Pequot Tribal Court ("Tribal Court") and to the laws of the MPTN. The decision of the Tribal Court shall be enforceable in any court of competent jurisdiction.

26. RIGHTS AND REMEDIES

The rights and remedies of Buyer and Seller set forth in the PO are cumulative and in addition to any other rights or remedies that they may have at law or in equity.

27. AUDIT

Buyer reserves the right to perform a financial or inventory audit as deemed necessary during or after the performance by Seller of its obligations under the PO. Buyer will be permitted to conduct such audit with any or all of its Procurement, Financial or Internal Audit resources. Buyer further reserves the right to conduct such audits with the assistance of a third party accounting /auditing firm.

28. GAMING PROCEDURES

Seller shall accurately complete and submit, at the direction of the MPTN Procurement Department, a "New Vendor Information Form" ("NVIF"). Seller shall notify MPTN Procurement Department in writing of any changes in the information supplied on the NVIF. Seller shall cooperate in any investigation conducted by the MPTN through its MPTN Gaming Commission, Office of the Inspector General or other duly authorized MPTN investigative entity. Failure to abide by the requirements of this paragraph is an event of default and may result in the immediate termination of this PO.

29. PRECEDENCE

In the event that the various parts of the PO are inconsistent, the following order of preference will apply: (i) special terms and conditions of the face of the PO, (ii) these Terms and Conditions, (iii) specifications, and (iv) all other attachments incorporated in the PO by reference.

END OF AGREEMENT